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Supreme Court of the United States
OCTOBER TERM, 1980

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, *et al.*,
Petitioners,

v.

LOCAL 334, UNITED ASSOCIATION ETC., *et al.*,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

DONALD J. CAPUANO
(Counsel of Record)
ROBERT MATISOFF
O'DONOGHUE & O'DONOGHUE
1912 Sunderland Place, NW
Washington, DC 20036
(202) 785-2237

GEORGE KAUFMANN
2101 L Street, NW
Washington, DC 20037

RICHARD C. COOPER
ROBERT S. SCAVONE
McCARTER & ENGLISH
550 Broad Street
Newark, NJ 07102

Attorneys for Petitioner United Association

TIMOTHY R. HOTT
591 Summit Avenue
Jersey City, NJ 07036

Attorney for Petitioners Locals 14 and 274

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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QUESTION PRESENTED

Section 301(a) of the Labor Management Relations Act of 1947 grants the United States district courts jurisdiction over "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . or between any such labor organizations."

The question presented is whether, as the Court below held, this provision excludes a suit by a local union against its International union alleging that the latter has violated its Constitution by issuing a consolidation order which changed the identity of the local unions representing employees in collective bargaining with employers.*

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* In addition to the United Association and Local 334, the other parties to the proceedings below were United Association Locals 49, 523, 124, 84, 14 and 274.

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IN THE

Supreme Court of the United States

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No. ———

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, *et al.*,
Petitioners,

v.

LOCAL 334, UNITED ASSOCIATION ETC., *et al.*,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioners, the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO and its Locals 14 and 274, petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit, entered on August 4, 1980, which vacated a judgment of the United States District Court for the District of New Jersey and remanded the case to the District Court with instructions to remand the case to the State court from which it had been removed.

OPINIONS BELOW

The opinion of the Court of Appeals is not yet reported. It is reproduced *infra* in Appendix ("App.") at pp. 1a-19a.

The opinion of the District Court was in the form of a Letter Opinion dated August 17, 1979 and is unreported. A copy appears *infra* (App. 20a-28a).

JURISDICTION

The judgment (App. 29a-30a) of the Court of Appeals was entered on August 4, 1980. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

Section 301(a) of the Labor-Management Relations Act of 1947, 61 Stat. 136 *et seq.*, 29 U.S.C. § 185(a), provides as follows:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in the Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

Petitioner United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (the "United Association") is an international labor organization representing employees in the construction industry. Until the events giving rise to this suit, Respondent Local 334 was one of the more than 550 local unions chartered by

and affiliated with the United Association. The terms of the relationship between the two labor organizations were established and governed by the United Association's Constitution, a document adopted and amended by action of the local union delegates to the United Association's regular conventions, held every five years.

Prior to 1977, there were twenty-seven local unions affiliated with the United Association in the State of New Jersey, including Local 334. Believing that this was far too many for the area involved, the United Association urged the locals to consolidate voluntarily. When they could not agree on a voluntary plan, the United Association proposed its own plan, under which Respondent Local 334 and eight other locals in the northern part of the State would be consolidated into two locals, one representing plumbers and the other representing pipefitters. Following a hearing on the proposed plan of consolidation conducted by a union hearing officer, the United Association, on August 4, 1977, issued an Order of Consolidation, which directed the nine northern New Jersey locals to consolidate in accordance with that plan. The Order was issued pursuant to Section 86 of the Constitution, which vests the United Association with the power to order local unions to consolidate in "one or more" locals when there is a superfluous number of locals in any locality and when, in the judgment of the United Association's General President, consolidation would be in the "best interest of the United Association, locally or at large" (App. 27a).

On August 22, 1977, Local 334 filed an action in the Superior Court of New Jersey, Chancery Division, Morris County, seeking to enjoin enforcement of the Order of Consolidation. The complaint alleged that the United Association had violated its Constitution in issuing that Order. The adverse effects allegedly resulting from the United Association's action in ordering the consolidation

were set forth at paragraphs 26-28 of Local 334's amended complaint:

> 26. At the present time plaintiffs have the exclusive contractual jurisdiction for all plumbing, pipefitting, metal trades and refrigeration work in Morris County, New Jersey. As such, plaintiff refers out its membership without distinction as to whether they bear a plumber membership card or a pipefitter membership card.
>
> 27. The present Order of Consolidation, unless stayed pending this litigation will result in deprivation of work opportunities for each member of plaintiff in that such members will thereafter be required to work under separate local unions which are divided along craft lines and therefore under separate referral lists as either a plumber or a pipefitter with no opportunity to interchange as is presently the case.
>
> 28. It is impossible to calculate the financial loss, therefore, to each member of plaintiff, since job referrals under the Order of Consolidation would be shared with members of two other local unions consolidated, as well as along craft lines. Moreover, each member of plaintiff will have to compete in the territory of Morris County with a large group of journeymen and will lose the advantage of their present positions on the out of work list of plaintiff. Therefore, there will be immediate and irreparable injury to the property rights of the members of plaintiff unless defendant is restrained and enjoined from disbanding Local 334 and enforcing the Order of Consolidation. Plaintiff itself will be required to surrender its assets to be divided between two local unions. Since a great portion of these assets consist of realty, a sale of that reality so as to conform with the division of assets will result in irreparable injury to plaintiff itself unless defendant is restrained

and enjoined from enforcing the Order of Consolidation.[1]

Asserting that federal jurisdiction existed under Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), the United Association timely removed the case pursuant to 28 U.S.C. § 1446 to the United States District Court for the District of New Jersey. Local 334 filed a motion to remand the case to state court, which the District Court denied from the bench after a hearing. Thereafter, several of the other locals involved in the consolidation were permitted to intervene, some supporting the consolidation and others opposing it.

In 1978, after completion of discovery, the United Association and Local 334 filed cross-motions for summary judgment. In a Letter Opinion dated August 17, 1979, the court issued its decision, granting summary judgment to the United Association. It ruled first that the Local had failed to exhaust its internal union remedies within the United Association. It ruled in the alternative that the United Association was entitled to summary judgment on the merits. After reviewing the relevant provisions of the Constitution and the history of their adoption and amendment, the District Court concluded there was "ample basis for the U[nited] A[ssociation]'s interpretation of the Constitution as well as the application of that interpretation in the Order of Consolidation of August 4, 1977" (App. 28a).

The Local appealed the District Court's decision. Nowhere in the main brief it filed with the Court of Appeals for the Third Circuit or in its reply brief to the United

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[1] Various other adverse effects were alleged by Local 334 in subsequent affidavits. Among these alleged effects were that Local 334's own contractual relations with employers had been destroyed (App. 16a); and that the continued existence of the jointly administered pension and welfare benefit funds for Local 334 members had been threatened (App. 16a).

Association's brief did the Local contend that the District Court lacked subject matter jurisdiction under Section 301(a). However, the Court of Appeals raised this issue *sua sponte* and the parties were requested to submit supplemental briefs on the issue prior to oral argument. At the oral argument itself, the jurisdictional issue was the only aspect of the case addressed and the Court requested further supplemental briefs on the issue.

On August 4, 1980, the Court of Appeals issued its decision. The Court rejected the position advanced by the United Association that there is federal jurisdiction under Section 301(a) over any action between two labor organizations in which a violation of a union constitution is alleged (App. 18a). There is no federal jurisdiction over such suits, the Court held, "in the absence of specific factual allegations of actions which have a significant impact on labor-management relations or industrial peace". (App. 18a). Determining that the standard which it thus formulated was not satisfied by the allegations of the pleadings in this case, jurisdiction was found lacking. Accordingly, the Court of Appeals vacated the judgment of the District Court and remanded to the District Court with instructions to remand the case to the state court from which it had been removed (App. 19a).

REASONS FOR GRANTING THE WRIT

I. THE COURT OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION WHICH SHOULD BE DECIDED BY THIS COURT.

This case concerns the meaning of the phrase "contracts * * * between any such labor organizations" (*i.e.*, labor organizations "representing employees in an industry affecting commerce * * *") in § 301(a) of the Labor Management Relations Act of 1947. In *Retail Clerks* v. *Lion Dry Goods*, 369 U.S. 17, the Court observed that

by virtue of that language "labor organizations could sue one another in federal courts on other grounds [than collective bargaining contracts] between themselves * * *" (*id.* at 26).

Since *Lion Dry Goods*, federal courts of appeals in ten Circuits (all but the Eighth) have decided the question whether this jurisdictional grant encompasses suits between one or more local labor organizations and their International alleging a violation of the International Constitution. The result has been that in three Circuits such an action will always be permitted, in one Circuit it will never be permitted, and in six Circuits jurisdiction depends on either the nature of the underlying dispute between the parties, or the court's characterization of the pleadings.

The leading case supporting jurisdiction is *Parks* v. *International Brotherhood of Electrical Wkrs.*, 314 F.2d 886 (4th Cir. 1963), *cert. denied*, 372 U.S. 976 (1963)). In a thorough discussion of the issue, the Court reasoned:

> The most that can be said with certainty is that Congress did not anticipate the problem. Looking to expressions of congressional purpose in regard to other provisions of the Act, it is possible to infer that had Congress considered the problem it would have limited section 301(a) jurisdiction so that federal courts would not thereby be in a position to settle such internal disputes. It is also possible, however, to conclude that Congress would have deemed it appropriate for federal courts to exercise jurisdiction over such disputes because, as the present one, they have traumatic industrial and economic repercussions. See § 1(b) of the LMRA, 29 U.S.C.A. § 141 (b). Moreover in interpreting the "between an employer and a labor organization" clause, the Supreme

Court has consistently favored the broad view of section 301(a) jurisdiction.

> In the absence of a clear expression of congressional intention to the contrary, we consider it permissible to adopt the more literal interpretation of the "between any such labor organizations" clause—the interpretation that would support jurisdiction in this case.
>
> A local union is a "labor organization" within the definition of § 2(5) of the NLRA. 29 U.S.C.A. § 152 (5). [314 F.2d at 916-917, footnotes omitted.]

Parks has been followed in the Second Circuit and in the Sixth Circuit. In *National Association of Letter Carriers* v. *Sombrotto*, 449 F.2d 915 (2nd Cir. 1971), Judge Friendly wrote:

> Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a), provides federal jurisdiction to entertain "suits for violation of contracts between * * * any such labor organizations [representing employees in an industry affecting commerce]." On its face, this language constituted a clear predicate for jurisdiction at the time the complaint was brought to enforce the relevant provisions of the NALC Constitution. See Parks v. International Brotherhood of Elec. Workers, 314 F.2d 886 914-917 (4th Cir.), cert. denied, 372 U.S. 976, 83 S.Ct. 1111, 10 L.Ed.2d 142 (1963); cf. Abrams v. Carrier Corp., 434 F.2d 1234, 1247-1248 (2nd Cir. 1970), cert. denied, United Steelworkers of America v. Abrams, 401 U.S. 1009, 91 S.Ct. 1253, 28 L.Ed. 2d 545 (1971). Section 1208(b) of the 1970 Postal Reorganization Act, 84 Stat. 719, 39 U.S.C. § 1208 (b), which for purposes here relevant came into effect on July 1, 1971, tracks the language of § 301 of the Labor Management Relations Act, making explicit that such jurisdiction will extend to suits for violations of contracts between labor organizations

> representing employees of the United States Postal Service. [449 F.2d at 918.]

And in *Trail* v. *International Broth. of Teamsters, Etc.*, 542 F.2d 961, 968 (6th Cir. 1976), the Sixth Circuit wrote:

> The language of § 301(a) authorizes in its terms "Suits for violation of contracts . . . between any such labor organizations." We see no reason why such a contract might not be expressed in a union constitution, a local union charter, or a combination of both. [542 F.2d at 968.]

The precise opposite view was taken by the Tenth Circuit in *Smith* v. *United Mine Workers of America*, 493 F.2d 1241 (10th Cir. 1974):

> A holding that the word "contracts" as used in § 301(a) encompasses union constitutions would open the doors of the federal courts to every dispute between a parent union and a local union over the meaning and effect of the union constitution. If Congress intended to turn over to the federal courts the control and supervision of internal union affairs which have no external application to industrial peace or to collective bargaining agreements we believe that Congress would have said so explicitly. [493 F.2d at 1243-44.]

Between these two absolutist positions fall the views of six other Circuits. The First Circuit found "no reason to depart from the literal meaning of the statute" in upholding Section 301(a) jurisdiction in a dispute over a union constitution that "directly concern[ed] the representation of workers in collective bargaining." *Local Union 1219, United Brotherhood of Carpenters and Joiners* v. *United Brotherhood of Carpenters and Joiners*, 493 F.2d 93, 96 (1st Cir. 1974). While acknowledging that a federal court should be wary of asserting jurisdiction over a purely internal union dispute, the Seventh Circuit nevertheless held a union constitution could be a

Section 301(a) "contract" in disputes which "may effect [sic] labor-management relations." *Local Union No. 657, United Brotherhood of Carpenters and Joiners* v. *Sidell*, 552 F.2d 1250, 1255-56 (7th Cir. 1977), *cert. denied*, 434 U.S. 862 (1977). The Ninth Circuit has indicated that Section 301(a) jurisdiction will not exist if the underlying controversy relates "only to a union dispute which will not affect external labor relations." *Stelling* v. *International Brotherhood of Electrical Workers*, 587 F.2d 1379, 1384 (9th Cir. 1978), *cert. denied*, 442 U.S. 944 (1979). The Fifth Circuit has held the alleged violation of the constitution must create a threat to industrial peace or have a significant impact upon labor-employer relations. *Alexander* v. *International Union of Operating Engineers*, 624 F.2d 1235 (5th Cir. 1980). Taking still another approach, the Court of Appeals for the District of Columbia Circuit expressly refrained from deciding whether the International constitution is a "contract" because the complaint before it did not contain "concrete allegations of actual threats to industrial peace", regarded by the Court as a "factual prerequisite" to § 301(a) jurisdiction. *1199 DC, National Union of Hospitals and Health Care Employees* v. *National Union of Hospital and Health Care Employees*, 533 F.2d 1205 (D.C. Cir. 1976).

The Third Circuit's opinion in the case *sub judice* followed this approach of the District of Columbia Circuit, in that the Court did not at all discuss the meaning of the critical statutory word "contracts". (But see this Court's repeated admonition that ". . . with any case involving the interpretation of a statute, our analysis must begin with the language of the statute itself." *E.g. Touche, Ross & Co.* v. *Redington*, 442 U.S. 560, 568, and cases cited *id.*) As the governing standard, the Court below adopted with approval the language of the Ninth Circuit in *Stelling*, *supra*, that "if a controversy [relates] only to a union dispute which will not affect external

labor relations, § 301 does not provide a basis for jurisdiction." (App. 14a, quoting 587 F.2d at 1384.)

While the difference in verbal formulations among the courts which have taken an intermediate approach to the jurisdictional question may be of relatively little moment, these courts have differed materially even among themselves in their approach to whether a complaint is sufficient to come within § 301(a), particularly as to whether a particular dispute is purely internal or affects external labor relations. See e.g., the comparison of the decision below with the rulings of the First and Seventh Circuits, pp. 12-14, *infra*.

The sum of the matter is that the existence or nonexistence of jurisdiction under § 301(a) differs from Circuit to circuit, and is likely to depend within some Circuits on the nature of the case or the draftsmanship of plaintiff's counsel. This uncertainty in the meaning of § 301 (a) should not be allowed to continue. While the provision for suits for violations of contracts between labor organizations is doubtless of lesser concern than that relating to contracts between employers and labor organizations, and gives rise to substantially less litigation, it is a part of the statute, and its inclusion therein was not inadvertent. See *Lion Dry Goods*, *supra*, 369 U.S. at 26-27. If, as we believe, this clause establishes federal jurisdiction for suits between local and International unions for violation of the International constitution, that jurisdiction should be exercised throughout the entire federal system. If § 301(a) reaches no such suits, the lower federal courts should be relieved of that responsibility. And if the correct meaning of § 301(a) falls somewhere between, this Court should adopt a formulation which the lower courts and the parties can understand and apply without extended litigation of the threshold issue of jurisdiction.

II. THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH THE DECISIONS OF FIVE OTHER COURTS OF APPEALS.

a. The holding of the Court below that there was no jurisdiction over this action is, of course, in direct conflict with the decisions of the Second, Fourth and Sixth Circuits discussed above that jurisdiction under § 301(a) lies in any suit between a local union and its International to enforce the International Constitution. This conflict, we submit, is itself a sufficient ground for *certiorari*.

b. The decision below is also in conflict with the rulings of two of the Court of Appeals which have taken the intermediate position that the existence of § 301(a) jurisdiction depends on the potential impact of the dispute on labor-management relations.

In *Local Union 1219, Etc.* v. *United Bro. of Carpenters & Join.*, 493 F.2d 93 (1st Cir. 1974) (hereafter *Local 1219*), the Court sustained jurisdiction over an action under the International Constitution that "directly concern[ed] the representation of workers in collective bargaining." [2] And in *Local Union No. 657, United Brother-*

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[2] The Court reasoned:

> Although Congress did indicate some reluctance to "effect extensive and detailed statutory regulation of internal union affairs," Parks v. International Bhd. of Elec. Workers, 4 Cir., 1963, 314 F.2d 886, 915, 915-916 n. 49, cert. denied 372 U.S. 976, it is clear that the local and International are each suable entities under the act. When two such entities' relationship is a matter of contract, and that contract directly concerns the representation of workers in collective bargaining, there is no reason to assume that Congress did not intend the statute to apply simply because the two parties to the contract are related. Furthermore, this suit is on a contract and is not intended to enforce internal customs and practices of the unions which have not been reduced to a contract; exercising jurisdiction here will not involve the courts in regulating internal union matters which Congress did not intend to control. In

hood of Carpenters and Joiners v. *Sidell*, 552 F.2d 1250, 1255 (7th Cir.), *cert. denied*, 434 U.S. 862 (1977), the Court, following *Parks* and *Local Union 1219*, sustained jurisdiction under § 301 because the complaint alleged that the International's challenged conduct would "affect[] the local's relationship with employers rather than [a] mere intra-union organizational change [as in the D.C. Circuit's case in which no jurisdiction had been found]".[3]

In discussing the *Local 1219* and *Sidell* cases, the Ninth Circuit in *Stelling* stated that the controversy "significantly affected labor-management relations [in that] the dispute affected the representation of workers in collective bargaining." (587 F.2d at 1383, quoted at App. 13a). Yet the Court below, although professing to adopt the *Stelling* test (id. 14a-15a, 18a), determined that it is not satisfied by the complaint herein.

Although acknowledging that paragraph 12 of Local 334's original complaint (quoted at App. 15a and similar to paragraph 26 of the amended complaint, quoted at p. 4 *supra*) does assert that the change in referral lists will reduce the work opportunities of members of Local 334, the Court below disputes "that the change will have a significant impact on employer-union relations. The re-

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such circumstances there is no reason in this case to depart from the literal meaning of the statute. *See* National Ass'n of Letter Carriers v. Sombrotto, 2 Cir., 1971, 449 F.2d 915, 918; Parks v. International Bhd. of Elec. Workers, ante. [493 F.2d 196]

[3] See also *Id.* at 1256, quoting *Keck* v. *Employees Independent Association*, 387 F. Supp. 241, 250 (E.D. Pa. 1974):

"[w]hen it is clear that an action is not intended to enforce internal union customs and practices and the relationship between the parties is contractual and may effect [sic] labor-management relations, there is no reason to assume Congress did not intend Section 301(a) to apply."

ferral lists are an internal union device for assigning work opportunities." (App. 16a) But even where the decision as to which persons are to be referred for employment is left to the union, the employer is obviously and directly affected. Indeed, such an exclusive referral procedure would not exist but for an employer-union agreement to that effect, see generally *Teamsters Union* v. *Labor Board*, 365 U.S. 667 (1961).

The Court below also discounted the allegation that the challenged

> "consolidation order terminated Local 334's collective bargaining agreements, thus significantly affecting labor-management relations. Although the order did terminate collective bargaining agreements, it specifically provided that all contractual obligations of Local 334, including existing collective bargaining agreements, were to be assumed and carried out by Locals 14 and 274. Under this directive, any impact on labor-management relations would be minimal. Furthermore, plaintiff did not allege any facts purporting to indicate what impact this change would have." [App. 16a, footnote omitted.]

We submit to the contrary that a change in local unions of which employees are members, and which are signatories to contracts with employers, both "directly concern the representation of workers in collective bargaining" (*Local 1219*, *supra*) and "affect the local['s] relationship with employers * * *. (*Sidell*)" The Court of Appeals' characterization of the complaint and the dispute in this case is irreconcilable with those decisions.

CONCLUSION

For the foregoing reasons this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

DONALD J. CAPUANO
(Counsel of Record)
ROBERT MATISOFF
O'DONOGHUE & O'DONOGHUE
1912 Sunderland Place, NW
Washington, DC 20036
(202) 785-2237

GEORGE KAUFMANN
2101 L Street, NW
Washington, DC 20037

RICHARD C. COOPER
ROBERT S. SCAVONE
McCARTER & ENGLISH
550 Broad Street
Newark, NJ 07102

Attorneys for Petitioner
United Association

TIMOTHY R. HOTT
591 Summit Avenue
Jersey City, NJ 07036

Attorney for Petitioners
Locals 14 and 274

APPENDIX

**OPINION OF THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT OF AUGUST 4, 1980**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 79-2407

LOCAL 334, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, a unincorporated association

UNITED ASSOCIATION, LOCAL 49, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, UNITED ASSOCIATION, LOCALS 523, 124, and 84, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA,

Intervenors

v.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO UNITED ASSOCIATION, LOCAL 14 and UNITED ASSOCIATION, LOCAL 274,

LOCAL 334, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA,

Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

(D.C. Civil No. 77-1769)

Argued May 20, 1980

Before: ADAMS, VAN DUSEN and HIGGINBOTHAM,
Circuit Judges

(Opinion Filed August 4, 1980)

James R. Zazzali, Esq. (Argued)
Francis J. Vernoia, Esq.
Zazzali, Zazzali & Whipple, P.A.
Newark, New Jersey
Attorneys for Appellant
Local 334

Timothy R. Hott, Esq.
Friedland & Friedland
Jersey City, New Jersey
Attorneys for Locals 274 & 14

Richard C. Cooper, Esq.
Robert S. Scavone, Esq.
McCarter & English
Newark, New Jersey

and

Donald J. Capuano, Esq.
Robert Matisoff, Esq. (Argued)
O'Donoghue & O'Donoghue
Washington, D.C.

Attorneys for United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the United States and Canada, et al.

Albert S. Parsonnet, Esq.
Parsonnet, Duggan & Pykon
Newark, New Jersey
Attorneys for Plumbers Local 49

OPINION OF THE COURT

VAN DUSEN, *Senior Circuit Judge.*

On this appeal Local 334 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Local 334) challenges a consolidation order issued by its parent international union, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (the international). Local 334 alleges that the order violated the internationals' constitution. Having raised, *sua sponte*, the question of subject matter jurisdiction, we requested that the parties submit supplemental briefs on this matter and address the issue at oral argument. After reviewing the various contentions, we conclude that the district court lacked subject matter jurisdiction. Accordingly, we will vacate the judgment of the district court and remand to the district court with instructions to remand the case to the state court.[1]

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[1] The suit was originally filed in state court, and then removed by the international to federal district court.

I.

Local 334, composed of both plumbers and pipefitters, represented employees in Morris County, New Jersey. It was affiliated with the international, a labor organization with approximately 550 affiliated local unions and 335,000 members. Prior to 1977 in New Jersey there were 27 locals affiliated with the international. In 1976 and 1977 the international urged the locals to consolidate voluntarily. When the locals could not agree on a voluntary consolidation plan, the international, in January 1977, proposed a plan consolidating the nine locals in northern New Jersey into two locals, one representing all the plumbers and one representing all the pipefitters.[2] The affected locals did not agree to the international's proposed plan and took the position that the status quo should be maintained. On August 4, 1977, the international issued an order of consolidation. In accordance with the previously proposed plan, the plumber members of Local 334 became members of Plumbers Local 14; the pipefitter members of Local 334 became members of Pipefitters Local 274.[3]

Local 334 sent a letter to the general executive board of the international requesting a stay of the order pending appeal. When no response to this request was received, Local 334 filed suit on August 22, 1977, against the international in the Superior Court of New Jersey,

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[2] A third local, composed of metal trades members employed by the New Jersey Public Service Electric and Gas Company, was also established. None of these individuals had been members of Local 334.

[3] After the consolidation, Plumbers Local 14 consisted of its own former members plus the plumbers who had been members of Locals 49, 84, 124, 326, 334, and 523, and Pipefitters Local 274 consisted of its own former members plus the pipefitters who had been members of Locals 49, 334, 523, and 765.

seeking to enjoin the enforcement of the order of consolidation. The defendant international removed the case to the United States District Court for the District of New Jersey on August 26. On September 16, Local 334 filed a motion to remand the action to state court. This motion was denied. The district court proceeded to a consideration of the merits. Local 334 and the international each filed motions for summary judgment. On August 20, 1979, the court entered an order dismissing the suit for failure to exhaust internal union remedies and, in the alternative, granting summary judgment in favor of the international and against Local 334. Local 334 filed a timely appeal.

II.

In every appeal presented to it, this court is required to test the presence of subject matter jurisdiction. *Medlin* v. *Boeing-Vertol Company*, No. 78-1928 (3d Cir., Apr. 22, 1980), slip op. at 5; *Pharmadyne Laboratories, Inc.* v. *Kennedy*, 596 F.2d 568, 570 n. 3 (3d Cir. 1979); *In re Trimble Company*, 479 F.2d 103, 110 (3d Cir. 1973). "To permit a federal trial court to enter a judgment in a case removed without right from a state court where the federal court could not have original jurisdiction of the suit even in the posture it had at the time of judgment, would by the act of the parties work a wrongful extension of federal jurisdiction and give district courts power the Congress has denied them." *American Fire & Casualty Company* v. *Finn*, 341 U.S. 6, 18 (1951). Accordingly, it is our duty to examine this challenge by a local affiliate to the international union's interpretation of the international constitution to determine whether this suit is cognizable in federal court.

The defendant international asserts that there is federal jurisdiction over this suit and over any other action between two labor organizations in which a violation of

the union constitution is alleged.[4] It relies on § 301(a) of the Labor-Management Relations Act, 29 U.S.C. § 185 (a) (1976). This statute provides:

> "*Suits for violation of contracts* between an employer and a labor organization representing employees in an industry affecting commerce . . . or *between any such labor organizations*, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." (Emphasis supplied.)

Asserting that "the very purpose [of § 301(a)] is to provide a federal forum for labor contracts,"[5] the defendant urges an expansive view of the jurisdictional grant embodied in § 301(a). It argues that "the union constitution creates a contractual relationship between the plaintiff local (and other locals) and the national union."[6] It contends that the union constitution itself is a contract between labor organizations. Therefore, according to this reasoning, a suit by a local or other subordinate labor group challenging the international's interpretation of the union constitution presents a federal question under 29 U.S.C. § 185(a), *supra*.

Local 334 disagrees with this view. It emphasizes that the federal courts have traditionally been very reluctant to intervene in the internal affairs of unions. *Lewis* v. *American Federation of State, County and Municipal Employees*, 407 F.2d 1185, 1192 (3d Cir.), *cert. denied*, 396 U.S. 866 (1969); *Drywall Tapers and Pointers* v. *Operative Plasterers' and Cement Masons' International*

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[4] Defendant's Supplemental Brief (May 29, 1980) at 2.

[5] *Id.* at 6.

[6] *Id.* at 2.

Association, 601 F.2d 675, 679 (2d Cir. 1979), *cert. denied*, 100 S.Ct. 918 (1980); *Stelling* v. *International Brotherhood of Electrical Workers*, 587 F.2d 1379, 1388-89 (9th Cir. 1978), *cert. denied*, 442 U.S. 944 (1979); *United Brotherhood of Carpenters & Joiners* v. *Sidell*, 552 F.2d 1250, 1255 (7th Cir.), *cert. denied*, 434 U.S. 862 (1977); *Smith* v. *United Mine Workers*, 473 F.2d 1241, 1242-44 (10th Cir. 1974); *Vestal* v. *Hoffa*, 451 F.2d 706, 709 (6th Cir. 1971), *cert. denied*, 406 U.S. 934 (1972); *English* v. *Cunningham*, 108 U.S. App. D.C. 365, 282 F.2d 848, 850 (D.C. Cir. 1960). *Cf. Howard* v. *United Association of Journeymen and Apprentices of Plumbing & Pipefitting Industry*, 560 F.2d 17, 21 (1st Cir. 1977); *Smith* v. *Local No. 25, Sheet Metal Workers International Association*, 500 F.2d 741 (5th Cir. 1974). It notes that the Supreme Court, although holding that the reference to "contracts" in § 301(a) encompasses more than collective bargaining agreements,[7] has never ruled that a labor union's constitution is a contract within the meaning of § 301(a). Further, it contends that there is no support in the legislative history for the defendant's assertion that federal district courts have subject matter jurisdiction in all suits in which there is a dispute concerning a union constitution.

The controversy thus is a limited one. The parties take opposing views of the scope of the jurisdictional grant embodied in § 301(a). In order to resolve this dispute, we must attempt to determine the intent of Congress in providing jurisdiction over "suits for violation of contracts between an employer and labor organization . . . or between any such labor organizations," 29 U.S.C. 185(a). The legislative history of this statute reveals that Congress explicitly intended that collective bargaining agreements be the prime subject of the "con-

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[7] *Retail Clerks* v. *Lion Dry Goods*, 319 U.S. 17, 26 (1962).

tracts between an employer and a labor organization" clause.[8] In *Retail Clerks* v. *Lion Dry Goods*, 369 U.S. 17 (1962), the Supreme Court held that this clause also encompassed more than collective bargaining agreements. It ruled that a strike settlement agreement is a contract intended to be actionable in federal court under § 301(a), stating:

> "It is enough that this is clearly an agreement between employers and labor organizations significant to the maintenance of labor peace between them. It came into being as a means satisfactory to both sides for terminating a protracted strike and labor dispute. Its terms affect the working conditions of the employees of both respondents. It effected the end of picketing and resort by the labor organizations to other economic weapons, and restored strikers to their jobs. It resolved a controversy arising out of, and importantly and directly affecting, the employment relationship. Plainly it falls within § 301(a)."

Id. at 28.

Legislative history, however, does not elucidate the "contracts . . . between . . . labor organizations" clause. Because the clause was not introduced until the House-Senate conference, there are no references to the clause in congressional debates or reports.[9] Nor did the conference committee provide any explanation of this addition.[10] Consequently, we must turn to decisional law for

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[8] 1 NLRB, Legislative History of the Labor Management Relations Act, 1947, at 421-24 (1948).

[9] 2 *id.* at 1526-1535, 1543 (1948).

[10] *Id. See* Note, *Applying the "Contracts Between Labor Organizations" clause of Taft-Hartley Section 301: A Plea For Restraint*, 69 Yale L. J. 299, 301 n. 18 (1959).

aid in interpreting the contracts-between-labor-organizations clause.

As mentioned earlier, the Supreme Court has not directly addressed this issue.[11] A number of our sister circuits have explored this issue, however, and their holdings provide substantial guidance. In *1199 DC, National Union of Hospital and Health Care Employees* v. *National Union of Hospital and Health Care Employees*, 175 U.S. App. D.C. 70, 533 F.2d 1205 (D.C. Cir. 1976), the defendant merged its affiliate in Washington, D.C., with its affiliate in Baltimore, Maryland. One affiliate sued, contending that the merger violated the union constitution. The court stated that the absence of "concrete allegations of actual threats to industrial peace" or of employers being faced with "untenable choices concerning union representation" was fatal to federal juris-

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[11] The Court in *Retail Clerks* did, however, cite approvingly *United Textile Workers* v. *Textile Workers Union*, 258 F.2d 743 (7th Cir. 1958), in which a federal court found jurisdiction under § 301(a) to enforce a no-raiding agreement between two international unions. The no-raiding agreement was deemed a contract between two labor organizations and held to fall within the scope of § 301(a). A suit based on a no-raiding agreement between two internationals is quite different from a suit based on one local's challenge to its international's interpretation of the union constitution, however. Violation of a no-raiding agreement between two internationals raises the spector of an industry-wide dispute. Such a dispute might well lead to disruption throughout large portions of the industry, creating problems for many employers. The problem of jurisdictional strikes was widely discussed by Congress during consideration of the Labor-Management Relations Act. *See* 1 NLRB, Legislative History of the Labor Management Relations Act, 1947, at 414, 615; 2 *id.* at 950-51, 995-97, 1056, 1654. No such attention was focused on the possibility of a local union challenging the international's interpretation of the union constitution, a situation less likely to have significant effects on employers. Thus, we must turn to another line of cases in order to resolve the specific jurisdictional question before us.

diction. *Id.* at 1208. Finding that the allegations concerning the union constitution revealed only an intra-union conflict, the court dismissed the claims under § 301(a).

Similarly, in *Smith* v. *United Mine Workers of America*, 493 F.2d 1241 (10th Cir. 1974), the international union ordered several districts to merge.[12] The basis of the suit filed protesting the merger was that the provision of the union constitution authorizing changes in the districts had been violated. The district court found for the plaintiff and enjoined the merger. The appellate court reversed, concluding that although the plaintiff's claim might be meritorious, there was no jurisdiction under § 301(a) to consider it. Believing that Congress was reluctant to have the federal courts intervene in every dispute between a parent and a local over the meaning of the union constitution, the court said:

> "If Congress intended to turn over to the federal courts the control and supervision of internal union affairs which have no external application to industrial peace or to collective bargaining agreements we believe that Congress would have said so explicitly. We agree. . . that it was not the intent of Congress for the courts to use the LMRA to police intra-union problems. . . . It follows that § 301(a) does not confer federal jurisdiction over the case before us." (Citation omitted.)

Id. at 1243-44.

In contrast to *1199 DC* and *Smith*, the Seventh Circuit in *Local Union No. 657, United Brotherhood of Carpenters and Joiners* v. *Sidell*, 552 F.2d 1250 (7th Cir.),

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[12] This union had a three level structure. The districts, which comprise the intermediate level, are composed of a number of locals. *Smith* v. *UMW*, 493 F.2d 1241, 1241-42 (10th Cir. 1974).

cert. denied, 434 U.S 862 (1977), held that there was § 301(a) jurisdiction over a complaint that the parent union had violated its constitution in ordering a local to affiliate with a certain district council. The court, however, adopted the holding of *1199 DC* that there must be more than "mere intra-union organizational change involved" in order for § 301(a) jurisdiction to exist. *Id.* at 1255. The court examined the pleadings and found that the plaintiff had alleged facts showing that the order in issue posed serious dilemmas concerning union representation for employees. In light of the specific factual allegations that the affiliation order would have a major impact on labor-management relations, the court concluded that § 301(a) jurisdiction was present.[13]

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[13] In *Local Union No. 657, Untd. Bthd. of Carpenters and Joiners* v. *Sidell*, 552 F.2d 1250 (7th Cir.), *cert. denied*, 434 U.S. 862 (1977), the court also considered whether a union constitution is a contract within the meaning of § 301(a). The court decided that a § 301(a) contract might be expressed in a union constitution, a local union charter, or a combination of both. *Id.* at 1253. We need not reach this issue. As the United States Court of Appeals for the District of Columbia Circuit remarked in *1199 DC*, 533 F.2d at 1207-08:

> "We need not face the issue whether a union constitution is a § 301(a) contract in this case, however. A factual prerequisite found in [cases where disputes about the interpretation of union constitutions provide jurisdiction under § 301(a)] is not alleged in this matter. . . . [T]here were no concrete allegations of actual threats to industrial peace. Furthermore, at oral argument before this court the plaintiffs offered no suggestion that employers were forced to make untenable choices concerning union representation. Therefore, the allegations concerning the union constitution reveal only an intra-union conflict.
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> "Without this factual prerequisite being alleged, we do not meet the issue whether the union constitution is a contract, and we affirm the dismissal of these § 301(a) allegations."

The posture of the instant case is similar to that of *1199 DC*. As explained in more detail in the text, *infra*, the allegations in the

The First Circuit reached a conclusion similar to that in *Sidell* in *Local Union 1219, United Brotherhood of Carpenters and Joiners* v. *United Brotherhood of Carpenters and Joiners*, 493 F.2d 93 (1974). There a bitter dispute between two locals erupted when the international granted a charter to represent millwrights to a new local. The carpenter locals, which had previously represented millwrights, refused to cease bargaining for millwrights. The president of the international did not provide interstate contractors with the necessary authorization to hire millwrights through the new local rather than the carpenter locals. Consequently, these employers were unable to determine with which union representatives they should bargain. The court examined the allegations to determine whether "exercising jurisdiction . . . [would] involve the courts in regulating internal union matters which Congress did not intend to control." *Id.* at 96. Concluding that the suit arising out of this particular factual situation involved more than solely intra-union concerns, the court ruled that federal jurisdictional under § 301(a) was present.

The most recent appellate decision on point, *Stelling* v. *International Brotherhood of Electrical Workers*, 587 F.2d 1379 (9th Cir. 1978), *cert. denied*, 442 U.S. 944 (1979), synthesized the cases discussed above. In *Stelling*, the court was presented with a claim that the international union had violated the international's constitution by failing to submit a bargaining agreement to the union membership for a ratification vote. The court held that there was no jurisdiction under § 301(a) be-

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complaint reveal only an internal union dispute. Without specific factual allegations which demonstrate that the consolidation order has a significant impact on labor-management relations, the complaint fails to satisfy a threshold requirement of § 301(a) jurisdiction.

cause the challenge to the union constitution concerned an "intra-union issue that does not affect labor-management relations." *Id.* at 1384. The touchstone of the *Stelling* court's analysis was the Supreme Court's statement in *Retail Clerks* that § 301(a) applies to suits based on contracts "significant to the maintenance of labor peace." 369 U.S. at 28. *Stelling* also discussed the pertinent courts of appeals cases, emphasizing that other courts, in attempting to ascertain whether § 301(a) jurisdiction existed, also had focused on the existence of a significant impact on labor peace.

> "Several courts have permitted actions under § 301 based on asserted violations of a union constitution. However, in each case where a constitution has provided the basis for jurisdiction, the court has specifically found that the controversy had either 'traumatic industrial and economic repercussions,' *Parks* v. *International Brotherhood of Electrical Workers*, 314 F.2d 886, 916 (4th Cir.), *cert. denied*, 372 U.S. 976, 83 S.Ct. 1111, 10 L.Ed.2d 142 (1963) (action by local against international for rescission of local's charter), or significantly affected labor-management relations, as where the dispute affected the representation of workers in collective bargaining. Local *Union 1219, United Brotherhood of Carpenters* v. *United Brotherhood of Carpenters*, 493 F.2d 93, 96 (1st Cir. 1974); *Local Union No. 657 of United Brotherhod of Carpenters* v. *Sidell*, 552 F.2d 1250, 1256 (7th Cir.), *cert. denied*, 434 U.S. 862, 92 S.Ct. 190, 54 L.Ed.2d 135 (1977). *See Keck* v. *Employees Independent Association*, 387 F.Supp. 241 (E.D.Pa. 1974).
>
> "Other courts have ruled that union constitutions do not provide a jurisdictional basis where the underlying controversy was strictly intra-union and unrelated to external labor-management relations. In *1199 DC, National Union of Hospital and Health*

Care Employees v. *Nat'l Union of Hospital and Health Care Employees*, 175 U.S. App. D.C. 70, 533 F.2d 1205 (1976), the union local and individual members and the parent unions alleging that a merger of locals violated the constitution. The court found no jurisdiction under § 301 because plaintiffs had not asserted any effect on collective bargaining or on relations with employers, therefore the dispute was deemed intra-union. In *Smith* v. *United Mine Workers*, 493 F.2d 1241 (10th Cir. 1974), union members sued the international contending that the merger of intermediate districts within the union violated the constitution. The 10th Circuit found no jurisdiction because the dispute was strictly intra-union and stated:

> [Section] 301(a) must be liberally applied to promote industrial peace, but that principle has no application here. This controversy relates only to the construction and application of the union constitution and has nothing to do with labor-management relations.

493 F.2d at 1243."

Id. at 1383. The *Stelling* court concluded that "if a controversy [relates] only to a union dispute which will not affect external labor relations, § 301 does not provide a basis for jurisdiction." *Id.* at 1384. Applying this standard to the record before it, the court ruled that a bald assertion that a certain action would have a major impact on labor-management relations was insufficient. Because the plaintiff failed to allege specific facts describing the impact on external labor relations, his claim was not cognizable under § 301(a). *Id.*

This review of the decisional law demonstrates that the courts are uniform in holding that solely intra-union disputes do not present a federal question under § 301(a). We agree with this reasoning and are persuaded by the

view that disputes between local and parent unions must involve events which potentially have a significant impact on labor-management relations or industrial peace in order for there to be jurisdiction under § 301(a). In light of these principles, we must examine the record in this case.

III.

The international correctly asserts that in determining whether § 301(a) jurisdiction exists the complaint is the crucial document.[14] It contends that the complaint contains three allegations of fact which have significant impact of labor-management relations. First, the defendant argues that plaintiff's charge that consolidation would change the existing system of referral constitutes an allegation of serious adverse impact on labor-management relations. In support of this contention, it relies on paragraph 12 of the original complaint:

> "At the present time plaintiffs have the exclusive contractual jurisdiction for all plumbing and pipefitting work in the area of Morris County. As such, Plaintiff refers out its membership without distinction as to whether they bear a plumber membership card or a pipe fitter membership card. The present Order of Consolidation will result in deprivation of work opportunities in that plaintiffs' mem-

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[14] The defendant concedes that in its answer it denied the complaint's factual allegations on which it now relies. Defendant's Supplemental Brief (May 29, 1980) at 11. It urges that it not be bound by its pleading, noting that in considering § 301(a) jurisdiction in cases involving challenges to a union's constitution, the courts have focused on the sufficiency of facts alleged. We agree that in this case the focus should be on the allegations in the complaint, rather than the denials in the answer. To hold otherwise would allow a defendant to defeat subject matter jurisdiction under § 301(a) in every case involving contracts between labor organizations merely by denying any allegations of external effects.

> bers will thereafter be required to work under separate referral lists as either plumbers or fitters and through separate local unions." [15]

Although this allegation does assert that the change in referral lists will reduce the work opportunities of members of Local 334, it does not follow that the change will have a significant impact on employer-union relations. The referral lists are an internal union device for assigning work opportunities. The local may agree to provide an employer with workers, and may use a referral list to facilitate that agreement, but the employer has no authority over the manner in which the referral list operates.[16] Such matters lie solely within the discretion of the union.

Second, the defendant argues that the plaintiff protested that the consolidation order terminated Local 334's collective bargaining agreements, thus significantly affecting labor-management relations. Although the order did terminate collective bargaining agreements, it specifically provided that all contractual obligations of Local 334, including existing collective bargaining agreements, were to be assumed and carried out by Locals 14 and 274.[17] Under this directive, any impact on labor-management relations would be minimal. Furthermore, plaintiff did not allege any facts purporting to indicate what impact this change would have.

Third, the defendant argues that the plaintiff alleged that consolidation would adversely affect the pension and welfare benefits of members of Local 334. The international points to the affidavit of William Wibbelt, former business manager of Local 334, who asserted that as a

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[15] App. at 14a.

[16] Plaintiff's Supplemental Brief (June 6, 1980) at 12-13.

[17] *Id.* at 14.

result of the consolidation order the pension and welfare benefits guaranteed to members of Local 334 would be destroyed.[18] This claim, however, misses the mark. Although pension and welfare benefits are the product of collective bargaining, they are essentially autonomous trust funds established under independent trust indentures. They are administered jointly by trustees composed of employers, employees, and neutral persons chosen by representatives of employers and employees. 29 U.S.C. § 186(c)(5)(B) (1976). The fact that a local union ceases to exist does not mean that the trust fund ceases to exist.[19] Nor does it mean that the employer is released from his obligations under the collective bargaining agreement to make pension and welfare contributions. As noted above, the consolidation order explicitly stated that the collective bargaining agreements and other contractual obligations of Local 334 would be carried out by the consolidated local unions. Thus, the fact that it is possible that changes in these trust funds may occur does not constitute a significant impact on labor-management relations.

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[18] App. at 130a.

[19] In fact, although the locals have been consolidated, the status of Local 334's welfare and pension funds has not changed. At this time, almost three years after the order of consolidation, Local 334's welfare and pension funds are still in existence as a separate entity. Plaintiff's Supplemental Brief (June 6, 1980), at 16. Furthermore, at the time of the consolidation, the affected locals were informed that various alternatives regarding the pension and welfare benefits plans were possible. The first alternative contemplated maintaining the individual plans of each local as separate plans with distinct features. Another alternative contemplated merging the plans of each local into the Local 14 plan. Under the second option, beginning with the expiration date of the collective bargaining agreements, employers' contributions for plumbers would be sent to Local 14. Exhibit D to Affidavit of Thomas Brennan, filed November 10, 1977.

We conclude that the pleadings in this case do not present concrete allegations of actual impact on employer-union relations. Our examination of the pleadings reveals that dispute over the propriety of the consolidation order concerns an intra-union matter. Therefore, we hold that § 301(a) does not provide federal jurisdiction for this case.[20]

IV.

To summarize, the intent of Congress in enacting § 301(a) of the Labor Management Relations Act was to grant jurisdiction to the federal courts over suits based on contracts significant to the maintenance of labor peace. Suits concerning intra-union matters that do not have a significant impact on labor-management relations or industrial peace are outside the scope of § 301(a). Thus, a suit by a local union challenging the parent union's interpretation of the union constitution does not, in the absence of specific factual allegations of actions which have a significant impact on labor-management relations or industrial peace, present a federal question under § 301(a). In the instant case the plaintiff, Local 334, contests the defendant international's order of consolidation, asserting that the order violates the unions constitution. Although Local 334 alleges that its members will be harmed in some ways as a result of the consolidation, the potential difficulties it alleges will result, even if they occur, would not have a significant impact on labor-management relations or industrial peace. Therefore, this suit, raising solely intra-union issues, falls outside the ambit of § 301(a). In light of this analysis, we conclude that the district court lacked subject matter jurisdiction over this controversy.

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[20] In light of this holding we necessarily do not reach the merits of this case. Our decision in favor of plaintiff's position on the jurisdictional issue carries no implication that we agree with the plaintiff on the substantive issue.

Accordingly, we vacate the judgment of the district court and remand to the district court with instructions to remand the case to the state court from which it was removed.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY OF AUGUST 17, 1979

UNITED STATES DISTRICT COURT
Room 411, U.S. Post Office Building
Newark, New Jersey 07102
FTS # (B) 341-2517

Vincent P. Biunno (201) 645-2517
Judge (201) 642-2451

LETTER OPINION (Filed August 20, 1979)

LETTER OPINION

Re: Local 334 v. United Association
Civil 77-1769

This action began in N.J. Superior Court. Local 334 of the United Association of Journeymen and Apprentices of the Plumbing & Pipe Fitting Industry (Local 334) sued the United Association of Journeymen and Apprentices of the Plumbing & Pipe Fitting Industry of the U.S. and Canada, AFL-CIO (United Association or U.A.) which removed to this Court. Jurisdiction is under Section 301 of the Labor Management Relations Act of 1947, 29 USC § 185(a). The dispute involves the propriety of the United Association's interpretation of its Constitution (1976) and the legality of its application in connection with an Order of Consolidation by the General President, Martin J. Ward, dated August 4, 1977.

The Order for Consolidation provided that a number of local unions in the northern New Jersey area, namely Locals 14, 49, 84, 124, 274, 326, 334, 523 and 765 were to be consolidated along trade lines (i.e., plumber or pipefitter) with the result that only Locals 14 and 274 sur-

vived. Local 765 and the pipefitter members of Locals 49, *334* and 523 were consolidated into Pipefitters Local 274. Locals 84, 124 and 326 and the plumber members of Locals 49, *334* and 523 were consolidated into Plumbers Local 14. The result was that locals such as plaintiff Local 334, which had previously been dual trade locals (plumbers and pipefitters) were split such that plumber members were consolidated into Plumbers Local 14 and pipefitter members were consolidated in Pipefitters Local 274.

The gravaman of plaintiff's action is that the consolidation order constitutes an illegal application of section 86 of the U.A. Constitution when read in light of section 3 of the Constitution and its historical development. Section 86 deals with consolidation and Section 3 with types of charters. The relief sought is an injunction against enforcement of the consolidation order and judgment setting aside the consolidation order on the ground that it exceeds the powers of the General President under section 86 of the U.A. Constitution.

Following a full hearing on September 16, 1977, an application by Local 334 for a preliminary injunction was denied by Order of that date. An appeal was taken from the denial of the preliminary injunction and apparently voluntarily withdrawn thereafter. By Order dated December 22, 1977, leave was granted to Locals 14 and 274 (surviving consolidated locals) to intervene as parties defendant and to Locals 49, 523, 128 and 84 to intervene as parties plaintiff.

The Court now has before it cross-motions for summary judgment filed by U.A. and Local 334. The other parties in intervention have likewise joined in the respective motions. All parties are in apparent agreement that the issues are properly before the Court as matters of

law and that there are no genuine issues of material fact, F.R.Civ.P. 56.

The first question is that of exhaustion of internal union remedies. This issue goes to the Court's jurisdiction. It was raised at the hearing of September 16, 1977 on application for preliminary injunction. (Tr. 137-38). Section 220 of the 1976 Constitution provides for an appeal to the next ensuing Convention of U.A. Pursuant to section 11, the next Convention will be held in August, 1981, since the section provides for a regular convention every five years. Section 222 of the 1976 Constitution, to which Local 334 has agreed, provides for exhaustion of remedies as follows:

> "SEC. 222. No officer, representative or member of the United Association or its Local Unions, or District Councils, or State or Provincial Association shall resort to court proceedings of any description, in any matter pertaining to this organization or its Local Unions, or his membership, or his office, until all remedies provided for within the United Association's Constitution have been fully exhausted."

This contractual provision to which Local 334 has bound itself has been held to expressly bar resort to court before full and complete exhaustion of remedies within the U.A. *Local 14, United Association, etc.* v. *United Association, etc.*, 61 N.J. Super. 228 (App. 1960). Although the *Local 14* case was decided long before adoption of the 1976 Constitution, the operative language of section 222 was identical under the then existing Constitution. (See section 222, 1956 Constitution).

The language concerning exhaustion contained in the case of *Cameron* v. *Durkin*, 74 N.E. 2d 671 (Mass., 1947) is not pertinent to the issue, since the 1946 U.A. Constitution was then in effect. The Court found that

an appeal to the next U.A. Convention was not a jurisdictional prerequisite to filing suit because under the Constitution then in effect the holding of a convention was not compulsory and a majority vote of the ownership could prevent the holding of a convention. (See section 44, 1946 Constitution). This is no longer the case, the 1976 Constitution, in section 11, provides that "Regular Conventions of the United Association *shall* be held once every five years." It is mandatory. As such, the language of *Cameron* is not a precedent on the exhaustion issue.

The language of section 222 is mandatory and clear and is the product of a voluntary contractual relationship binding upon Local 334 as a party to the agreement. As such, in accordance with the *Local 14* case, *supra*, the Court finds that jurisdiction does not exist.

Assuming that this ruling is incorrect and that there is jurisdiction, the merits of the cross-motions for summary judgment are considered.

The essence of Local 334's argument is that President Ward's application of section 86 of the 1976 Constitution, which governs consolidation, was illegal and beyond his authority under the Constitution. The gravaman of the complaint is that Local 334, previously a dual trade local composed of both plumbers and pipefitters, has been split such that its plumbers went into one single trade local (Plumbers Local 14) and its pipefitters into another (Pipefitters Local 274). It is argued that this is an improper exercise of the consolidation power.

Local 334 asserts that the U.A. lacks the power under section 3 of the 1976 Constitution to charter new "straight line" or "single trade" local unions and hence cannot legally achieve the result through consolidation. Section 3 *supra*, provides in pertinent part:

> "The United Association shall charter three types of Local Unions: Building and Construction Trades Local Unions, Metal Trades Local Unions, and Combination Local Unions."

This section on chartering, the argument continues, must be read in light of the historical development of the present U.A. Constitution. There is no dispute that before 1946 the U.A. had craft or trade distinctions as between plumbers and pipefitters and that unions were properly chartered as "straight line" or single trade locals. Likewise, it is not disputed that at the 1946 convention the concept of the "universal journeyman" was adopted and that a number of constitutional provisions which abolished all trade lines as between plumber and pipefitters were adopted.

Accordingly, the new section 2 of the 1946 Constitution provided:

> "Sec. 2(a). Membership. The United Association of Journeymen and Apprentices of the United States and Canada, having full and exclusive trade jurisdiction over the plumbing and pipe fitting industry, shall be composed of journeymen and apprentices of one craft without jurisdictional lines of demarcation.
>
> Sec. 2(b). Abolishment of Trade Lines. That there shall be one trade craft in the plumbing and pipe fitting industry for all journeymen and apprentice members of the United Association and all journeymen members shall be permitted without restriction or bar to perform all work governed by the trade jurisdiction of the United Association; all apprentice members of the United Association shall, under the supervision and control of journeymen members, be permitted without restriction or bar to perform all

work covered by the trade jurisdiction of the United Association."

In conformity with this, a new version of section 143 was also added to the 1946 Constitution:

"Jurisdiction of Work

Sec. 143. The United Association having full and exclusive jurisdiction over the plumbing and pipe fitting industry, including the supervision, fabrication, installation and maintenance of plumbing and pipe fitting installations of every description and character, shall be composed of journeymen and apprentices of one craft, without jurisdictional lines of demarcation.

The United Association shall charter three types of Local Unions: Building and Construction Trades Local Union, Metal Trades Local Union, and a Combination Local Union. There shall be but one trade craft in the plumbing and pipe fitting industry for all journeymen and apprentice members of the United Association, and all journeymen members and apprentice members of the United Association shall be permitted without restriction or bar to perform all work governed by the trade jurisdiction of the United Association."

It is Local 334's contention that the survival of the language concerning the types of charters contained in the 1946 Constitution, presently embodied in section 3 of the 1976 Constitution, somehow demonstrates the survival of the doctrine of the "universal journeyman" concept which had abolished all trade line distinctions between plumbers and pipefitters.

The series of modifications to the Constitution from 1946 to 1976 simply belies this interpretation. All lan-

guage concerning existence of only one trade craft has been deleted over the years. The "universal journeyman" concept has simply been eliminated by the plain language of the Constitution since 1946 as well as in practice. The existence of "straight line" plumbers or pipefitters locals through the years since 1946 cannot be disputed. See *Local 14* v. *United Association, etc.*, 61 N.J. Super. 228, 231 (App. Div. 1960). *See also* the Ward affidavit.

In 1956 a resolution was passed which provided membership books contain a place for designation of a special skill which skills were limited to plumber, steam fitter or pipe fitter, sprinkler fitter, and lead burner.

At the 1961 Constitutional Convention all references to the existence of a single craft in the plumbing and pipefitting industry were eliminated. The deletions are clear. All language contained in the 1946 Constitution which referred to the abolution of trade lines and prohibition of restrictions on trade jurisdiction was conspicuously deleted (See sections 2, 3 and 4 of 1961 Constitution) and remains absent from the current 1976 Constitution. Plaintiff asserts, based upon the Committee's statement that the 1946 sections were "superfluous and unnecessary," that the 1961 deletions did not change the substance of the Constitution as it relates to plumber-pipefitter trade lines. The Committee's language is ambiguous and capable of a number of interpretations.

On the other hand, the deletions made, as well as the language of the 1961 and 1976 Constitutions, are clear. The 1946 additions were effectively eliminated in full.

The courts will not interfere in intra-union matters and impose an interpretation of a union rule or constitution contrary to that of the union itself so long as that interpretation is reasonable. *See e.g., English* v. *Cun-*

ingham, 282 F.2d 848 (D.D.C. 1960); *Vestal* v. *Hoffa*, 451 F.2d 706 (CA 6, 1971). This is basic contract law. Courts do not make contracts different than those made by the parties.

The interpretation of the 1976 Constitution by the U.A. is clearly reasonable and in accordance with the provisions contained therein. The constitutional history denies plaintiff's interpretation of section 3 of the current Constitution. The "single trade" concept has been abandoned and fully deleted from the Constitution. The express language of the Constitution is controlling.

Moreover, section 86 of the 1976 Constitution provides as follows:

> "Consolidation of Locals
>
> Section 86. Whenever, in the judgment of the General President, it is apparent that there is a superfluous number of Local Unions in any locality, and that a consolidation would be for the best interest of the United Association, locally or at large, he shall have the power to order Local Unions to consolidate and to enforce the consolidation of said Local Unions or said territory in one or more Local Unions, provided such course received the sanction of the General Executive Board."

This section was amended in response to the holding of *Cameron* v. *Durkin*, *supra*, in order to clearly provide that a given local could be split and consolidated into two or more locals. (Compare section 90, 1961 Constitution with section 131 of the 1946 Constitution). [See Ex. F to Ward Affidavit].

Section 2 of the 1976 Constitution reserves in the U.A. "the right to decide all matters pertaining to trade and territorial jurisdiction of its affiliated Local Unions. . . ."

These two constitutional provisions, viewed in light of the historical deletions of the "single craft" or "universal journeyman" concept, provide ample basis for the U.A.'s interpretation of the Constitution as well as the application of that interpretation in the Order of Consolidation of August 4, 1977.

Accordingly, defendant U.A.'s motion for summary judgment, joined in by the intervenor defendants, Locals 14 and 274, will be granted.

Nothing in this opinion is to be read as a comment upon the rights of an individual union member to practice the trade or trades which he practiced prior to the consolidation. This point was raised in the case. No individual union member was ever brought in as a party, and so his individual rights are not dealt with in any way.

August 17, 1979

/s/ Vincent P. Biunno, U.S.D.J.

Original to Clerk
xc: All parties

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT OF AUGUST 4, 1980

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 79-2407

LOCAL 334, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, an unincorporated association

UNITED ASSOCIATION, LOCAL 49, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, UNITED ASSOCIATION, LOCALS 523, 124 and 84, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA,

Intervenors

VS.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO UNITED ASSOCIATION, LOCAL 14 and UNITED ASSOCIATION, LOCAL 274,

LOCAL 334, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA,

Appellant

(D.C. Civil No. 77-1769)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Present: ADAMS, VAN DUSEN and HIGGINBOTHAM, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel on May 20, 1980.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court filed August 20, 1979, be, and the same is hereby vacated and the cause is remanded to the said District Court with instructions to remand the cause to the state court from which it was removed, in accordance with the opinion of this Court.

ATTEST:

/s/ [Illegible]
Clerk

August 4, 1980